

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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JUN 14 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale)
Obligations Pertaining to)
Commercial Mobile Radio Services)

CC Docket No. 94-54

To: The Commission

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**COMMENTS OF TIME WARNER TELECOMMUNICATIONS
ON SECOND NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

With an eye toward developing a more competitive environment, Time Warner Telecommunications ("TWT") -- a new wireless service provider -- supports the Commission's tentative conclusion that imposing a resale obligation on Commercial Mobile Radio Service ("CMRS") providers is in the public interest. TWT is offering cellular services via resale in Rochester, New York where consumers have been benefiting from TWT's entry into the market through competitively-priced, innovative offerings. As a result of TWT's entry into the market, the incumbent cellular carriers have responded with price decreases and service offerings further benefiting consumers. However, TWT wants to bring even more innovative service offerings to benefit consumers today and has the technological capabilities to do so now.

TWT and other new wireless providers could offer additional innovative service offerings to consumers in markets across the country through a mandated switch-based resale policy. A mandatory switch-based resale policy would also enable new wireless entrants, such as future broadband PCS licensees, to establish a market presence and expedite competition in the market to the further benefit of consumers. Unfortunately, the Commission tentatively concluded that mandatory switch-based resale should not generally be required. While TWT understands that the imposition of a general interconnection obligation on all CMRS providers is not justified at this time, a specific

interconnection obligation for the dominant cellular carriers is important to ensure immediate facilities-based competition and is therefore consistent with the Commission's efforts to foster wireless competition.

Switch-based resale will provide new wireless carriers with quicker and more direct access to information and data, along with greater flexibility to tailor unique service offerings to specific customer needs. Such features and services could include: limited calling areas, incoming call screening, distinctive call signaling, priority call waiting, cellular extension, cellular PBX, cellular centrex, voice mail enhancements, dual-system access, custom directory service, cellular secretary, multi-line hunting and advanced billing.

In initially rejecting the call for switch-based resale, the Commission indicated that such a requirement may be unnecessary in light of the expected competition from new PCS providers. Although the Commission has taken significant steps which will eventually lead to facilities based competition from PCS licensees, such competition is, at best, years away. In addition, despite the conclusory protests of some incumbent cellular carriers, reseller switch interconnection is technically feasible today and will not impose unreasonable costs on either the carriers, consumers or the Commission.

The most expedient, least burdensome method of facilitating the immediate deployment of competitive wireless services is to require cellular carriers (1) to interconnect with switch-based

reseller systems at unbundled, cost-based rates to enable switch-based cellular resellers to utilize their own intelligent network capabilities, and (2) to cooperate immediately in the nationwide effort to make telephone numbers transferable. TWT urges the Commission to adopt these requirements as part of its continuing effort to bring to the public full-fledged competition today in the communications industry.

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Time Warner Telecommunications, a division of Time Warner Entertainment Company, L.P., by its attorneys, submits these Comments in response to the Commission's Second Notice of Proposed Rulemaking ("Second Notice") in the captioned proceeding.¹

I. INTRODUCTION

Time Warner Telecommunications ("TWT") -- a new wireless telecommunications service provider -- strongly supports the Commission's tentative conclusion that imposing a resale obligation on Commercial Mobile Radio Service ("CMRS") providers is in the public interest. Currently, TWT is offering cellular services via resale in Rochester, New York where consumers have been benefiting from TWT's entry into the market through competitively-priced, innovative offerings and user-friendly marketing. In Rochester, TWT has introduced innovative cellular

¹Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, FCC 95-149 (released April 20, 1995) ("Second Notice").

service packages which are structured to provide consumers greater value and clarity of understanding than those offered by the facilities-based cellular carriers. As a result of its efforts, TWT has had tremendous success in attracting new subscribers who previously had not subscribed to cellular. The other cellular carriers in the market have responded to TWT's entry with price decreases and service offerings which are further benefiting the consumers.

However, TWT does not want to stop here. TWT's commitment to wireless technology involves taking wireless service to a higher plateau where it can bring consumers innovative service combinations based on intelligent-network, multimedia and integrated landline/wireless capabilities.

Although competition from new wireless providers such as Personal Communications Service ("PCS") licensees is on the horizon, it remains years away. In the near term, TWT and other new wireless providers could offer additional innovative service offerings to consumers in markets across the country through a mandated switch-based resale policy. Such a policy would have two main elements: (1) a requirement that cellular carriers interconnect their networks with resellers' switches on a cost-based, unbundled basis; and (2) number transferability. In its Second Notice, the Commission significantly underestimates the public benefits of switch-based resale and gives far too much credence to expressions of concern by cellular carriers that reseller switch interconnection is not technically feasible and

would impose costs on both the Commission and the cellular carriers.

TWT understands the Commission's disinclination to impose unnecessary regulation on evolving wireless service providers including PCS or Enhanced Specialized Mobile Radio Services ("ESMR"). On the other hand, the Commission's reservations should not extend to the "dominant" cellular incumbents. Until full, facilities-based wireless competition arrives, perhaps in three to five years, Commission precedent and the public interest require regulation sufficient to temper the ability and incentive of the dominant cellular carriers to use their market power to inhibit competition.

To facilitate the deployment of competitive wireless facilities and until such networks are sufficiently employed, the most efficacious, least burdensome approach is to require cellular carriers (1) to interconnect with switch-based reseller systems at unbundled, cost-based rates to enable switch-based cellular resellers (including the new PCS licensees) to utilize their own intelligent network capabilities, and (2) to facilitate reseller acquisition of telephone numbers and provide for installation of these numbers on resellers' switching platforms. Such requirements would not only enhance the services available from cellular resellers, but would also facilitate entry by PCS licensees and other wireless service providers by enabling them to establish market presence before their systems are fully deployed.

II. SWITCH-BASED RESALE OF CELLULAR SERVICE IS IN THE PUBLIC INTEREST.

A. Switch-Based Resale Is Technically Feasible and Economically Reasonable and Can Be Implemented Today.

One reason given by the Commission for not adopting a mandatory switch-based resale policy is that:

a mandatory switch-based resale policy may impose costs on the Commission, the industry, and consumers. For example, CMRS providers might have to incur costs to satisfy a requirement to unbundle their services and offer interconnection on the terms needed for switch-based reseller.²

This statement has no record support and is based on the conclusory allegations of the cellular carriers. These carriers have not identified any specific costs to the consumer or to the Commission.³

Rules governing switch-based resale would be straightforward for the Commission to administer and for cellular carriers to implement. For example, the Commission's rules requiring LECs to interconnect with cellular carriers have not been burdensome for the carriers or the Commission. There is no reason to believe that similar rules applicable to resellers will have a different result. Moreover, the cellular industry has more than ten years

²Second Notice at ¶96.

³The Commission provided but one example of a potential cost of requiring switch-based resale ("CMRS providers might have to incur costs to satisfy a requirement to unbundle their services and offer interconnection on the terms needed for switch-based reseller"). Second Notice at ¶96. Yet, in the same breath, the Commission also admits that "the record reflects differing views with regard to such costs." Id. Even assuming there are certain costs associated with the proposed interconnection, such costs would be outweighed by the public interest benefits of making interconnection available.

of experience with roaming interconnections, and several leading cellular carriers and equipment manufacturers have informed TWT that these features could be readily implemented for switch-based resale.

Specifically, a number of cellular switch manufacturers have for some time offered the capability for licensees in adjacent cellular geographic service areas to interconnect their switches. This interconnection allows service providers to share data bases to provide wide-area roaming and switch-to-switch hand-off. Consequently, the mobile customer can receive continuous service, including intersystem call hand-off, while traveling into a neighboring system, and may make and receive calls in the neighboring system as if they were in the home system. The mobile customer also may access his or her home features and services via this connection. Motorola's Distributed Mobile Exchange is one such technology that has been in existence for many years.⁴ The Telecommunications Industry Association standardizes these intersystem operations for use across wide ranging systems on a nationwide basis.

The cellular providers, who would prefer to remain insulated from switch-based competition, oppose a mandatory switch-based resale policy on technical and economic grounds.⁵ However, their criticism is unjustified. The truth is that switch-based

⁴See Communications Daily, Feb. 13, 1990, at 5 (Distributed Mobile Exchange permits state-wide service in Nebraska).

⁵See Second Notice at ¶80.

interconnection is both technically feasible today and economically reasonable.

In a typical scenario, after establishing its own switching facilities between the cellular carrier's MTSO and the LEC and IXC facilities, a switch-based reseller would assume all of the telecommunications functions on the landline side of the MTSO. The reseller switch would process all calls. While the reseller switch would not interfere with any of the functions performed by the cellular carrier's MTSO, the reseller would be able to assume many of the switching and administrative functions which would otherwise reside with the cellular carrier.

Specifically, a switch-based reseller would be able to process both the land-to-mobile and mobile-to-land calls of its customers, maintain its own customer records, provide many vertical features and services, and be responsible for verifying and recording the calls of its customers. Customer information would be routed through the reseller switch for verification. If verified, the cellular carrier would route the call for completion through the reseller switch. Under this arrangement, the cellular carrier need only prepare a bulk bill covering all calls to or from the reseller's customers. The reseller would record the duration, origin, destination and billing information for all calls to and from its customers.

Under the specific system design envisioned by TWT, which has been developed with input from several cellular carriers and equipment manufacturers, TWT would independently obtain blocks of

telephone NPA-NXX codes that would reside on the TWT switch. In effect, the underlying carrier would treat this group of subscribers as a special class of "roamers" on the its cellular network. Telephony routing responsibility would be placed on TWT, mobility management on TWT's intelligent network platform, and wireless services on the underlying carrier's local cellular network.⁶

TWT is by no means the only entity that has proposed a viable switch-based resale plan. For example, in obtaining authority from the state of California to provide switch-based resale, CSI set forth a detailed switch-based proposal. CSI stated that its switch and associated data bank would absorb from the cellular carrier "the number administration, most billing functions, vertical services, call recordation and verification, and routing functions" ordinarily performed by incumbent cellular carriers.⁷ In addition, comments filed by the National Cellular Resellers Association also contain a description of how a switch-based resale arrangement would function.⁸ The simple truth is that there are many possible technical configurations and variations in potential service offerings. Because it may cost millions of dollars to develop and install a reseller switch, it

⁶A more detailed description of TWT's specific plans (including call handling processes and implications of the configuration) is described in a declaration of Alex D. Felker, Senior Vice President of Time Warner Telecommunications, and attached hereto as Exhibit 1.

⁷California PUC Decision, 138 P.U.R. 4th 45, (1992) at ¶10.

⁸Comments of NCRA at Exhibit A (filed September 14, 1994).

is unlikely that an entity would make such an investment without a high degree of confidence that the reseller switch concept can be successfully implemented.⁹

B. Switch-Based Resale Benefits Consumers.

In the Second Notice, the Commission tentatively concluded that mandatory switch-based resale should not be "generally imposed upon CMRS providers at this time."¹⁰ TWT agrees that the imposition of a general interconnection obligation on all CMRS providers is not justified at this time. However, a specific interconnection obligation for cellular carriers is not only justifiable, it is important to create a competitive marketplace in the near term pending arrival of new wireless entrants.¹¹

In tentatively concluding not to implement a mandatory switch-based resale policy, the Commission ignored the many compelling public interest benefits associated with switch-based resale. New wireless carriers could bring to subscribers numerous innovative features and services if they are guaranteed the right to interconnect their own switches to cellular carriers' MTSOs. For example, switch-based resellers would be able to offer features and services such as: limited calling areas, incoming call screening, distinctive call signaling, priority call waiting, cellular extension, cellular PBX, cellular

⁹See California PUC Decision, 138 P.U.R. 4th 45, ¶10.1 (1992).

¹⁰Second Notice at ¶95.

¹¹TWT addresses the specific interconnection requirements in Part III, below.

centrex, voice mail enhancements, dual-system access, custom directory service, cellular secretary, multi-line hunting and advanced billing.¹² Specifically, switch-based resale would enable TWT to offer a number of important capabilities, including:

- Single number feature for all Time Warner local services (e.g., wireless and landline);
- Routing of all incoming and all local outgoing calls through the TWT switch, thereby
 - providing near-real time billing capability,
 - taking advantage of unique interconnection, arrangements between TWT and other carriers, and
 - minimizing forwarding to, busy, or no answered calls on the underlying cellular carrier's network; and
- AIN functionality, including mobility management and other unique services which TWT may develop.

Resellers can offer a limited number of these services (or similar services) through the underlying cellular carrier without owning or controlling their own switches. However, switch-based resale would provide new wireless carriers (including the PCS licensees) with quicker and more direct access to information and data, along with greater flexibility to tailor unique service offerings to specific customer needs. Moreover, greater flexibility will encourage all carriers to engage in marketing and technical innovation, thereby fostering a more diverse and competitive marketplace. Robust competition among service

¹²For a narrative description of each individual service, see Comments of Cellular Service, Inc. and ComTech, Inc., CC Docket 94-54 at Exhibit 1, p.2-8 (filed September 12, 1994).

providers will lead to lower prices and improved service for consumers -- a result that is clearly in the public interest.

C. Broadband PCS Is Not Yet A Competitor to Existing Cellular Carriers.

The Commission also pointed to competition to cellular service in the form of broadband PCS in tentatively concluding not to adopt a mandatory switch-based resale policy.

Given the number of competitors we expect to be present in the market in the near future, competitive forces should provide a significant check on inefficient or anticompetitive behavior. This fact suggests that a regulatory mandate to allow switch-based resale may be unnecessary.¹³

The Commission also tentatively concluded that the relevant product market for purposes of analyzing the switched resale proposal is comprised of those wireless carriers that offer switched mobile voice services over networks that are fully interconnected to the public switched telephone network.¹⁴

While TWT does not quarrel with the Commission's definition of the relevant product market, it disagrees with the Commission's finding that such a market includes the up to six broadband PCS providers who are purchasing licenses at auction.¹⁵ By including future broadband PCS services in the relevant product market, the Commission is effectively considering future broadband PCS providers as "actual potential competitors" to the

¹³Second Notice at ¶96.

¹⁴Second Notice at ¶95.

¹⁵Id. at ¶96.

existing cellular carriers.¹⁶ As the Commission has acknowledged, in order to be considered an "actual potential competitor," a future entrant must be able to "quickly achieve a significant impact on price in the relevant market."¹⁷ Broadband PCS will not satisfy that criterion.

It now appears that the full facilities-based competition the Commission expects from broadband PCS is not nearly as imminent as the Commission may have at one time assumed. The Commission has granted only three broadband PCS licenses to date - to the winners of pioneer's preferences.¹⁸ It has completed the auctions for the A and B Major Trading Area frequency blocks, but petitions to deny have been filed against all of the auction winners. It may be months before the underlying applications are granted. The Commission has yet to auction the remaining four frequency blocks and, in fact, has recently suspended the filing deadline for the short-form applications for the Block C authorizations.¹⁹

Assuming that the objections to the applications of the A and B block auction winners were resolved favorably to the applicants, merely licensing broadband PCS would have little

¹⁶Petition on Behalf of the Louisiana Public Service Commission, FCC 95-191, ¶ 22 (released May 19, 1995).

¹⁷Id. at n. 59.

¹⁸American Personal Communications, et al., 10 FCC Rcd 1101 (1994).

¹⁹Public Notice, "FCC Postpones Short-Form Filing Date For 493 BTA Licenses Located in the C Block for Personal Communications Services in the 2 GHz Band", (June 13, 1995).

near-term competitive impact on the existing cellular carriers. The monumental task necessary to construct PCS networks together with the high cost of facilities-based broadband PCS entry (license acquisition cost, spectrum clearance cost and equipment acquisition and infrastructure construction costs) promise to slow broadband PCS buildout. Even if licenses were issued by the fall of 1995, the licensees would only have to deploy service to one-third of the population of their service areas by mid-year 2000. Whether they deploy their systems over greater areas will depend on factors that are unpredictable at this time. Coverage of one-third of the population alone does not provide a sufficient basis to warrant a finding now that broadband PCS is an actual potential competitor to cellular. Nor would the market shares of the PCS carriers be sufficiently large in the near term to justify the competitive analysis. Building out these PCS systems, much less capturing a significant share of the wireless market from two strongly established incumbents in each market, will be a daunting task.²⁰ Finally, it is far from clear how many broadband PCS providers will actually see the light of commercial operation or what types of services they will provide. In this regard, opinion now appears to be swinging toward the view that PCS will compete more directly with traditional local

²⁰See, e.g., "The New Wireless Looks A Bit Pricey," Business Week, December 5, 1994, at 104; Donaldson, Lufkin & Jenrette, The Wireless Communications Industry, Winter 1994 - 1995, at 4-5.

telephone service rather than supplementing existing mobile services.²¹

The only reasonable conclusion is that broadband PCS providers will not "quickly achieve a significant impact on price in the relevant market." Therefore, broadband PCS providers cannot be considered "actual potential competitors" and should be excluded from the Commission's definition of the relevant product market for purposes of analyzing the current value of switch-based resale as a competitive force. Should competitive conditions change in the future, the Commission is free to reevaluate its interconnection requirements and to modify them if it concludes that the costs outweigh the benefits.

The best hope for actual potential competition in the near term, which will bring the benefits of service innovations and vigorous price competition in the mobile market, is resale. The difference between resale when cellular was licensed²² and resale today is that technology has made it possible and economically feasible to provide switch-based resale rather than simply pure resale of airtime. Switch-based resale, if encouraged and facilitated by the Commission's regulatory policies, will provide the type of constraint on the cellular duopoly that the Commission over a year ago hoped the broadband PCS licensees would provide "in the near future."

²¹See George Gilder, "From Wires to Waves," Forbes ASAP, June 5, 1995, at 25.

²²Cellular Communications Systems, Report and Order, 86 F.C.C.2d 469, ¶¶ 103 - 07 (1981).

III. THE COMMISSION SHOULD REQUIRE CELLULAR CARRIERS TO PROVIDE REASONABLE INTERCONNECTION TO SWITCH-BASED RESELLERS.

A. The Commission Must Regulate Cellular Carriers Differently From Other CMRS Carriers Because of Their Market Power.

In the Second Notice, the Commission states that, although efficient interconnection is in the public interest, it may be premature to impose a general interconnection obligation on all CMRS licensees.²³ The Commission then seeks comment on whether it should require a class of CMRS carriers or individual CMRS carriers to provide interconnection based on the carrier's or group's "market power." In this regard, the Commission solicits comment on whether local exchange carriers ("LECs") or their affiliates that operate CMRS systems have particular incentives to deny interconnection to other CMRS licensees in order to keep as much traffic as possible on the wireline network.²⁴

TWT believes that the Commission should, consistent with long-standing policies regarding resale and the encouragement of competition, require all cellular carriers, whether they are affiliated with LECs or not, to provide interconnection and unbundling to all other CMRS carriers as long as the cellular carriers continue to have market power (i.e., until there are additional facilities-based competitors providing equivalent two-way voice and data services). The Commission may hold in abeyance any decision regarding the interconnection and

²³Second Notice at ¶ 29.

²⁴Id. at ¶43.

unbundling obligations of other CMRS licensees pending developments when their systems are operational.

In its Second Report and Order in Regulatory Treatment of Mobile Services,²⁵ the Commission undertook an analysis of the state of competition in the various segments of the CMRS marketplace to determine whether it should forbear from Title II regulation to the full extent authorized by Section 332(c)(1)(A) of the Communications Act. After assessing the record in the proceeding, the Commission concluded that, unlike other market segments, the cellular segment is a shared monopoly, or duopoly, whose status would change only when PCS systems became operational. The Commission found, therefore, (1) that the CMRS market is not a single market but rather a heterogeneous group of markets; (2) that the cellular segment is not fully competitive; and (3) that any forbearance from regulation in the cellular segment must be accompanied by reporting requirements and vigilant monitoring.²⁶ The Commission has reached an identical conclusion regarding the dominance of cellular carriers every time it has considered the question.²⁷

²⁵9 FCC Rcd 1411 (1994).

²⁶Id. at ¶¶ 136 - 38. The Commission said that "there is some competition in the cellular services marketplace. There is insufficient evidence, however, to conclude that the cellular services marketplace is fully competitive." Id. at ¶ 154.

²⁷Competitive Common Carrier Services, Fifth Report and Order, 98 F.C.C.2d 1 (1984); Regulatory Treatment of Mobile Services, supra note 25.

Since it first adopted its dominant/non-dominant classification scheme, which is based on market power, the Commission has consistently regulated carriers with market power differently from carriers without market power.²⁸ It has not mattered whether the carriers with market power have used wires or radio to provide their services.²⁹ The Commission has retained the requirements until it was satisfied that the market power had ebbed.³⁰ Consequently, the Commission would be departing from precedent if it failed to address the cellular carriers' market power in the context of CMRS interconnection.³¹

Thus, the issue to be decided here is not whether circumstances have changed such that interconnection obligations should not be imposed on cellular carriers based on their market power. Clearly they have not. Rather, the issue is which interconnection obligations are required in the public interest under Sections 201 and 332(c)(1)(B) of the Act. The Commission

²⁸See, generally, Tariff Filing Requirements for Non-Dominant Carriers, Notice of Proposed Rulemaking, 8 FCC Rcd 1395 (1993), and cases cited therein; Third Computer Inquiry, Report and Order, 104 F.C.C.2d 958, ¶¶ 201 - 222 (1986).

²⁹Competitive Common Carrier Services, First Report and Order, 85 F.C.C.2d 1 (1980).

³⁰Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880 (1991), recon., 7 FCC Rcd 2677 (1992).

³¹The courts "have long held that an agency must provide adequate explanation before it treats similarly situated parties differently." Petroleum Communications, Inc. v. FCC, 22 F.3d 1164, 1172 (D.C. Cir. 1994). The Commission has not explained why it imposes quite specific interconnection obligations on wireline carriers with market power but not on wireless carriers with market power.

should order cellular carriers to interconnect with switch-based resellers, to offer unbundled airtime to resellers and to order cellular carriers to make interim and permanent number portability available to resellers immediately.

B. The Commission Should Require Number Transferability And Cost-Based Interconnection Rates For Switch-Based Resellers.

1. Number Portability.

The Commission seeks comment on whether number transferability, or "portability," should be an element of its CMRS resale policy. The Commission observes that with number portability, CMRS resellers would be able to move their customers among facilities-based carriers or to migrate them to their own PCS systems when they are constructed without requiring the customers to change their telephone numbers. Thus, the Commission believes that number portability would have a beneficial impact on competition in the marketplace.³² TWT strongly supports the Commission's tentative findings and urges the Commission to require cellular carriers to cooperate with switch-based resellers to allow numbers to reside in the resellers' switches.

The Commission has long recognized that access to, and unfettered use of, numbering resources is crucial for wireless as

³²Second Notice at ¶ 94.

well as local exchange and interexchange competition.³³ Simply stated, in a competitive marketplace a carrier's control over numbers affords it the ability to create a bottleneck. Most customers are more reluctant to change service providers if they must change telephone numbers.³⁴ Under the Commission's prompting and pressure from new entrants, wireline carriers already offer pseudo-portability and are working toward a long-term solution for the technical challenges.³⁵ In this proceeding the Commission should find unequivocally that all facilities-based CMRS carriers, but particularly cellular carriers, must allow all resellers to administer the numbers that are assigned to their end user customers, and must allow the numbers administered by switch-based resellers to reside in the resellers' switches.

³³Amendment of Part 22, Report and Order, 59 Rad. Reg.2d 209, ¶ 9 (1985); The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg.2d 1275, 1283 - 85 (1986); Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880, ¶ 138 (1991); Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, 9 FCC Rcd 2068, ¶ 42 (1994) (FCC "recognize[s] the importance of local number portability to the promotion of competition in the local exchange market").

³⁴Andrew D. Lipman, "Strange Bedfellows," Telephony, June 5, 1995, at 22.

³⁵See, e.g., "Telephone Numbers Hang Up Local Bell Rivals," The Wall Street Journal, Jan. 13, 1995, at B1, col. 3; "Local Number Portability," Telco Competition Report, Mar. 16, 1995, at 17.

2. Unbundled Interconnection at Cost-Based Rates.

The Commission's only tentative conclusion regarding volume, or bulk, discounts is that "any volume discount available to a cellular or other CMRS carrier's large 'retail' customers must also be available to resellers on the same terms and conditions offered to retail customers."³⁶ This conclusion, which TWT supports, leaves unresolved the issue of carrier-to-carrier discounts based on the actual costs of interconnection. TWT believes that the Commission should adopt the principle, historically applied in the case of wireline carriers with market power, that cellular carriers must provide switch-based resellers and other competitors with the features and functions they need in order to compete on an unbundled basis at cost-based rates.

The Commission has repeatedly held that new competitors of dominant carriers should not be required to purchase from the dominant carriers features and functions that they do not need in order to compete.³⁷ Yet in its Second Notice the Commission speculates that "CMRS providers might have to incur costs to satisfy a requirement to unbundle their services and offer interconnection on the terms needed for switch-based resellers" as though that were inconsistent with longstanding policy.

³⁶Second Notice at ¶ 85.

³⁷Filing and Review of Open Network Architecture Plans, Report and Order, 4 FCC Rcd 1 (1988); Expanded Interconnection with Local Exchange Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993).

TWT does not argue that all CMRS providers should have to unbundle their services; however, it would be inconsistent with existing policy for the Commission to refuse to require cellular carriers with market power to unbundle their services. As TWT demonstrates in these Comments, the costs and administrative complexity are, at worst, modest. Furthermore, the cellular carriers would be entitled to reasonable compensation for legitimate costs incurred in providing interconnection with resellers' switches just as local exchange carriers are entitled to compensation for providing interconnection for cellular carriers.³⁸

The features and functions that should be unbundled are essentially those that can only be provided by cellular carriers by virtue of their government-anointed duopoly: airtime and certain switching functions that will enable customers of other carriers to originate or terminate calls. Specifically, switch-based resellers should be able to purchase, at cost-based rates,³⁹ (1) the channel between the cellular carrier's switch and the end user's mobile telephone (*i.e.*, airtime); (2) an

³⁸See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d 1275, 1283-85 (1986).

³⁹TWT recommends that the Commission require the cellular carriers to charge no more than the direct cost as the basis for their interconnection charges. This requirement would be consistent with the requirement imposed on local exchange carriers for expanded interconnection. See, e.g., Expanded Interconnection with Local Exchange Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, ¶¶ 127 - 131 (1992).